

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

Glenn Meyers,

Complainant,

vs.

Robert Brom and Rodney Unglesbee,

Respondents.

NOTICE OF DETERMINATION OF
PRIMA FACIE VIOLATION
AND

NOTICE OF AND ORDER FOR
EVIDENTIARY HEARING

TO: Glenn Meyers, 9130 279th Avenue N.W., Zimmerman, MN 55398; Robert Brom, 7101 285th Avenue N.W., Princeton, MN 55371; and Rodney Unglesbee, 28496 Nacre St. N.W., Princeton, MN 55371.

On April 11, 2006, Glenn Meyers filed a Complaint with the Office of Administrative Hearings alleging that Robert Brom and Rodney Unglesbee violated Minn. Stat. § 211B.04 by preparing and/or disseminating campaign material without a disclaimer in the form required by Minn. Stat. § 211B.04. After reviewing the Complaint and attached exhibit, the undersigned Administrative Law Judge has determined that the Complaint sets forth a prima facie violation of Minn. Stat. § 211B.04.

THEREFORE, IT IS HEREBY ORDERED AND NOTICE IS HEREBY GIVEN that this matter will be scheduled for an evidentiary hearing to be held at the Office of Administrative Hearings, 100 Washington Avenue South, Suite 1700, Minneapolis, Minnesota 55401, before three Administrative Law Judges. The evidentiary hearing must be held within 90 days of the date the complaint was filed, pursuant to Minn. Stat. § 211B.35. You will be notified of the date and time of the evidentiary hearing, and the three judges assigned to it, within approximately two weeks of the date of this Order. The evidentiary hearing will be conducted pursuant to Minnesota Statutes § 211B.35. Information about the evidentiary hearing procedures and copies of state statutes may be obtained online at www.oah.state.mn.us and www.revisor.leg.state.mn.us.

At the evidentiary hearing all parties have the right to be represented by legal counsel, by themselves, or by a person of their choice if not otherwise prohibited as the unauthorized practice of law. In addition, the parties have the right to submit evidence, affidavits, documentation and argument for consideration by the Administrative Law Judge. Parties should bring with them all evidence bearing on the case with copies for the Administrative Law Judge and opposing party.

At the conclusion of the evidentiary hearing, the Administrative Law Judges will choose to: (1) dismiss the complaint, (2) issue a reprimand, (3) find a violation of 211B.06, and/or (4) impose a civil penalty of up to \$5,000. The panel may also refer the complaint to the appropriate county attorney for criminal prosecution. A party aggrieved by the decision of the panel is entitled to judicial review of the decision as provided in Minn. Stat. §§ 14.63 to 14.69.

Any party who needs an accommodation for a disability in order to participate in this hearing process may request one. Examples of reasonable accommodations include wheelchair accessibility, an interpreter, or Braille or large-print materials. If any party requires an interpreter, the Administrative Law Judge must be promptly notified. To arrange an accommodation, contact the Office of Administrative Hearings at 100 Washington Avenue South, Suite 1700, Minneapolis, MN 55401, or call 612/341-7610 (voice) or 612/341-7346 (TTY).

Dated: April 12, 2006

/s/ Kathleen D. Sheehy
KATHLEEN D. SHEEHY
Administrative Law Judge

MEMORANDUM

The Complaint concerns the March 14, 2006, election in Spencer Brook Township. The Complainant alleges that a campaign flyer prepared and/or disseminated by the Respondents failed to have a disclaimer substantially in the form required by Minn. Stat. § 211B.04. Specifically, the Complaint states that the disclaimer on the campaign flyer was not prominently displayed, it failed to include the address of the persons or committee that prepared it, and it failed to state that it was circulated in opposition to certain ballot questions.^[1]

Campaign material is defined to mean “any literature, publication, or material that is disseminated for the purpose of influencing voting at a primary or other election, except for news items or editorial comments by the news media.”^[2] Campaign material is required, under Minn. Stat. § 211B.04(a), (b) and (d), to prominently include a disclaimer identifying the name and address of the person or committee that prepared or disseminated the material and, if applicable, a statement that the material is “in opposition to” particular ballot questions.

Minn. Stat. § 211B.04 states, in relevant part:

(a) A person who participates in the preparation or dissemination of campaign material other than as provided in section 211B.05, subdivision 1, that does not prominently include the name and address of the person or committee causing the material to be prepared or disseminated in a disclaimer substantially in the form provided in paragraph (b) or (c) is guilty of a misdemeanor.

(b) Except in cases covered by paragraph (c), the required form of disclaimer is: "Prepared and paid for by the

committee, address)" for material prepared and paid for by a principal campaign committee, or "Prepared and paid for by the committee, (address), in support of (insert name of candidate or ballot question)" for material prepared and paid for by a person or committee other than a principal campaign committee.

...

(d) Campaign material that is not circulated on behalf of a particular candidate or ballot question must also include in the disclaimer either that it is "in opposition to (insert name of candidate or ballot question)"; or that "this publication is not circulated on behalf of any candidate or ballot question."

Respondents' campaign flyer^[3] urges voters to vote for Respondents and to vote against the two ballot questions regarding a five-person town board and hiring a town clerk. At the bottom of the flyer in very small print is the following statement: "Paid for by the candidates on their behalf." The disclaimer does not include an address and does not state who prepared the flyer. In addition, the disclaimer does not include a statement that the flyer was circulated in opposition to the ballot questions. The only address listed in the body of the flyer is the address of the Spencer Brook Town Hall. According to the Complaint, some voters were confused by the inclusion of the Town Hall address and assumed incorrectly that the flyer had been disseminated by the Town Board. The flyer does, however, include the telephone number of Respondent Brom.

The purpose of the disclaimer requirement is to identify for voters who or what group is responsible for the campaign material at issue. Disclaimers are required to be "substantially in the form provided" in section 211B.04(b). The lack of a complete disclaimer on Respondents' campaign flyer is sufficient to establish a prima facie violation of Minn. Stat. § 211B.04. This matter will be referred to the Chief Administrative Law Judge for assignment to a panel of three Administrative Law Judges for an evidentiary hearing. Prior to the evidentiary hearing, the undersigned Administrative Law Judge will conduct a prehearing conference with the parties by telephone. The parties may at that time determine that an evidentiary hearing is not necessary and agree to allow the panel to make its decision based on the Complaint and the record created during the prehearing conference. A notice and order scheduling the telephone prehearing conference and evidentiary hearing will be issued to the parties shortly.

K.D.S.

^[1] See Minn. Stat. § 211B.04 (a), (b) and (d).

^[2] Minn. Stat. § 211B.01, subd. 2.

^[3] Attachment to Complaint.